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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,371	06/22/2000	John D. Nelson	101992-200	8796

27267 7590 10/24/2002

WIGGIN & DANA LLP  
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EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 10/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

09

Application No.

599371

Applicant(s)

Nelson et al

Examiner

MEC Long

Group Art Unit

1616 13

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 9/4/02
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-3, 5, 8-11, 33, 34, 43-58 are is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-3, 5, 8-11, 33, 34, 43-58 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-3, 5, 8-11, 33, 34, 43-58 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 12
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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Receipt is acknowledged of Request for Time, Amendment, and IDS (9/14/02).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 5, 8-11, 33, 34, 43-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Kappock et al 5518774.

The rejection of record is maintained. It is well known to provide the compositions as claimed, of pyrithione and heavy metal ion sources; exemplified here by Kappock, Examiner does not find the mechanism of action for the instant claimed composition identified by Kappock, nor even concern for efficacy in the aqueous environment, but the instant invention as claimed is a composition, and Kappock shows it, antimicrobially effective, in aqueous environments (column 3), at a 10:1 to 1:10 level. Note that organic solvents are not required.

Claims 1-3, 3, 5, 8, 11, 33, 34 and 43-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiese-5227156.

A pyrithione complex, zinc pyrithione (column 3) is prepared with zinc oxide hydroxides or salts, in aqueous composition, at 10 to 1 ratio.

Claims 1-3, 8, 11, 44, 47, 48, 53, 54, 57 and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Dixon et al EP 077630.

ZPT with chelating agent and copper ions is antimicrobially enhanced (page 2), EDTA (page 3, paragraph 2) is the chelating agent, copper salts, the ion source (page 4, last paragraph) at the instant ratio's (page 4, paragraphs 1, 3).

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Claims 1-3, 5, 8, 11, 33, 34, 43-46, 51 and 58 are rejected under 35

U.S.C. 102(b) as being anticipated by Khattar et al '93.

See page 175, 176.

Applicant's arguments filed 7/5/02 have been fully considered but they are not persuasive. Applicant's arguments are not persuasive; they are addressed above—the prior art provides the composition and are instantly claimed; the particular functions thereof are not given patentable weight.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy: mv  
October 21, 2002



NEIL S. LEVY  
PRIMARY EXAMINER